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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	
FM Broadcast Stations	)	MB Docket No. 02-199
	)	RM-10514
(Magnolia, Arkansas and Oil City,	)	
Louisiana)	)	

To: The Commission

APPLICATION FOR REVIEW
OF
ACCESS.1 LOUISIANA HOLDING COMPANY, LLC

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TABLE OF CONTENTS

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I. INTRODUCTION

Access.1 Louisiana Holding Company, LLC ("Access.1"), licensee of commercial broadcast radio stations operating in the Shreveport Urbanized Area, pursuant to Section 1.115 of the Commission's Rules, 47 CFR Section 1.115, hereby submits its Application for Review of the *Memorandum Opinion and Order*, DA 04-245, of the Assistant Chief, Audio Division, of the Media Bureau, released January 30, 2004, in the above-captioned rule making proceeding (the "*MO&O*"). In the *MO&O*, the Bureau denied the Petition for Reconsideration and Motion for Stay filed by Access.1, and affirmed its grant of the Petition for Rule Making of Columbia Broadcasting Company, Inc. ("Columbia"), to amend the Table of Allotments to delete Channel 300C1 at Magnolia, Arkansas and allot Channel 300C2 to Oil City, Louisiana as that community's first local transmission service, and to modify the authorization of radio station KVMA-FM to specify Oil City

as the community of license. For the reasons set forth below, Access.1 requests that the Commission review and reverse the Bureau's *MO&O*.

II. SUMMARY

Section 1.115 of the Commission's Rules permits the filing of an application for review of an action taken on delegated authority if the action: (1) is in conflict with statute, regulation, case precedent or established Commission policy, (2) involves a question of law or policy which previously has not been resolved by the Commission, (3) involves application of a precedent or policy which should be overturned or revised, (4) involves an erroneous finding as to an important or material question of fact, or (5) involves procedural error. As Access.1 shall demonstrate, the *MO&O* requires review on most of the grounds set forth in Section 1.115. The *MO&O* conflicts with established Commission precedent, involves application of a precedent and policy which should be revised, involves an erroneous finding as to a material fact, and involves procedural error.

Specifically, the Bureau committed at least six errors which require Commission review. First, the Bureau allowed the reallotment of a rural FM allotment to a community from which 100% of the Shreveport Urbanized Area could be served. Second, the Bureau dismissed as mere "speculation" the likelihood that Columbia would move its antenna site to a location from which it would serve 100% of the Shreveport Urbanized Area. Third, after Access.1 demonstrated that Columbia had misrepresented its actions and had demonstrated a lack of candor by failing to disclose that it had filed to move its antenna site to cover 100% of the Shreveport Urbanized Area, the Bureau neither investigated nor imposed a sanction upon this blatant misconduct. Fourth, the

Bureau misapplied the policy underlying the Commission's *Community of License* decision.[1] Fifth, the Bureau applied a *Tuck*[2] analysis which is now in conflict with the Commission's newly adopted rule defining radio markets based upon Arbitron markets. Sixth, the *Tuck* analysis is not supported by any measurable method for determining whether a licensee provides "local service," and is therefore arbitrary, capricious and an abuse of discretion, and needs to be revised or eliminated, in accordance with the reasoning of the Court of Appeals in *Bechtel.*[3]

Access.1 shall demonstrate, that the Bureau's lax attitude is allowing the movement of numerous rural allotments to urbanized areas and is completely undermining the policy objective of the *Community of License* decision. Therefore, Access.1 requests that the Commission: (1) review and reverse the Bureau's decision that reallotted Channel 300C1 from Magnolia, Arkansas to Oil City, Louisiana, (2) direct the Bureau to change its procedures for evaluating reallotment petitions, where the reallotment of a rural allotment will permit service to 100% of an Urbanized Area, (3) require petitioners seeking reallotment of a rural frequency to disclose in their petitions the service area planned to be served, (4) direct the Bureau to deny petitions for reallotment where the petitioner misrepresents the petitioner's true intentions, and (5) clarify the Commission's *Community of License* policy to deny the reallotment of rural frequencies to communities from which 100% of an Urbanized Area can be served, absent an affirmative representation by the

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[1] *Modification of FM and TV Authorizations to Specify a New Community*, 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License*").

[2] *Faye & Richard Tuck*, 3 FCC Rcd 5374, 65 RR 2d 402 (1988) ("*Tuck*").

[3] *Bechtel v. FCC*, 10 F 3d 875 (D. C. Cir. 1993).

petitioner that it is not intending to move its antenna site to a location from which it can serve 100% of the Urbanized Area.[4]

III. QUESTIONS PRESENTED

Did the Bureau Permit Columbia to Engage in Misrepresentation and Lack of Candor, Resulting in an Abuse of the Commission's Reallotment Policies?

Do the Bureau's Procedures for Evaluating Reallotment Petitions Adequately Protect Against Abuse of the Reallotment Policies, or Do They Permit, and Encourage, Misrepresentation and a Lack Of Candor?

Should The Commission's *Community of License* Policy Be Amended to Address the Abuse of the Commission's Policy Demonstrated in this Proceeding?

Did the Bureau Appropriately Apply the Commission's *Community of License* Policy in this Proceeding?

Should the Commission Review and Clarify its *Community of License* Policy?

Is the Commission's *Tuck* Analysis Consistent with the Commission's New Definition of Radio Markets Utilizing Arbitron Market Definitions?

Is the Commission's *Tuck* Analysis Legally Supportable Or Has It Become, Arbitrary, Capricious and An Abuse of Discretion?

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[4] In the *MO&O*, the Bureau asserts that the Commission may not revise or clarify its method of evaluating reallotment petitions except through a new rule making proceeding. *MO&O* at n. 6. However, Section 1.420 of the Commission's rules, which sets forth the procedures for seeking a reallotment, does not set out the weight to be accorded the various factors in reviewing a reallotment petition. The weight to be given those factors has been developed through case law. See. e.g., *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 1995 LEXIS 6207 (1995) ("*Headland*"). Nothing proposed by Access.1 herein conflicts with Section 1.420. Therefore, the Commission can adjust the weight given to various factors and impose additional requirements in the context of this case.

IV. BACKGROUND

The above-captioned proceeding began with the filing of a Petition for Rule Making by Columbia on February 2, 2002, seeking the reallotment of Channel 300C1, licensed to KVMA-FM, from Magnolia, Arkansas to Oil City, Louisiana.[5] Magnolia is 65 kilometers (40.4 miles) from Oil City.[6] KVMA-FM is the only FM radio station licensed to Magnolia. If KVMA-FM is reallotted, the only remaining broadcast station licensed to Magnolia will be KVMA(AM), a Class D station with no protected night time service.[7]

The licensee of KVMA-FM is Columbia Broadcasting Company, Inc. On May 22, 2002, Columbia submitted a Form 315 application for Commission consent to transfer control of KVMA-FM to Cumulus Broadcasting, Inc. ("Cumulus"), File No. BTCH-20020522AAH. Closing of the stock purchase agreement (the "KVMA-FM Purchase Agreement") pursuant to which Cumulus would acquire control of Columbia was contingent upon grant of the instant proposal. *See* KVMA-FM Purchase Agreement, Section 4.1; File No. BTCH-20020522AAH. Upon issuance of the MO&O on January 30, 2004, Cumulus and Columbia consummated the transfer of control on the same day. Thus, Cumulus now controls Columbia and KVMA-FM.

On September 23, 2002, Access.1 became involved in this proceeding by filing Comments. ("Access.1 Comments"). In its Comments, Access.1 pointed out that the proposal before the Commission directly implicates the policy established by the Commission in *Community of License.*

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[5] The Commission released the *Notice of Proposed Rule Making*, DA 02-1812, on July 17, 2002.

[6] Access.1 filed Comments on September 23, 2002. Access.1 submitted with its Comments the Engineering Statement of Michael D. Rhodes, P.E. of Cavell, Mertz & Davis, Inc. Access.1 Comments, Exhibit A.

[7] Access.1 Comments, Exhibit A.

Access.1 explained that Columbia proposed to move the allotment of KVMA-FM 65 kilometers (40.4 miles) from Magnolia, Arkansas, which is a very small rural community, to Oil City, Louisiana, which is only 39 kilometers (24.2 miles) from Shreveport, Louisiana, an Urbanized Area, having a population of 274,445. In addition, the closest point in Oil City to the closest point in Shreveport is less than 22 kilometers (13.7 miles).[8] Access.1 demonstrated that the requested reallotment was the first step in a plan by which Columbia would have the station reallotted, sell control of Columbia to Cumulus, and Cumulus would then move the antenna to cover the Shreveport Urbanized Area, to be operated as a part of the cluster of stations already owned and operated by Cumulus in the Shreveport Urbanized Area.[9]

Columbia, in its Reply to Access.1's Comments, referred to Access.1's arguments as "speculations."[10] In adopting the *Report and Order,*[11] the Bureau relied upon Columbia's assertion that Access.1's arguments were mere "speculation."[12] Access.1 filed its Petition for Reconsideration and Motion for Stay on June 13, 2003, in response to the *Report and Order.*

After filing its Petition for Reconsideration and Motion for Stay, Access.1 filed on September 23, 2003, a Supplement to present information which was not available at the time that Access.1 filed its Petition for Reconsideration.[13] In its Supplement Access.1 informed the Bureau that Cumulus had filed, with Columbia's consent, what it characterized as a "minor amendment"

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[8] Access.1 Comments, Exhibit A at 3.

[9] Access.1 Comments at 5-8.

[10] Columbia Reply Comments at 5.

[11] *Report and Order*, MM Docket No. 02-199, DA 03-1227, released April 28, 2003.

[12] *Report and Order* at par. 3.

[13] Access.1 Supplement filed September 23, 2003.

to a Form 301 construction permit application, which had been filed June 10, 2003, proposing to move the KVMA-FM antenna to a site from which the 60 dBu contour will encompass 100% of the Shreveport Urbanized Area.[14]

Access.1 showed that the application proposing to cover the entire Shreveport Urbanized Area was filed on July 17, 2003. On July 29, 2003, Columbia filed its "Opposition to Petition for Reconsideration and Opposition to Motion for Stay" and repeated its claim that Access.1's arguments were mere "speculation."[15]

On January 20, 2004, the Chief, Audio Division, Media Bureau sent a letter to counsel for the parties in this proceeding. In the letter, the Bureau stated that it would conduct an analysis of the Columbia Petition under the Commission's *Tuck* policy and directed Columbia to submit a *Tuck* analysis and offered Access.1 an opportunity to respond to Columbia's submission.[16] On January 28, 2004, Access.1 submitted its Second Supplement to address the issues raised in the Bureau's January 20, 2004 letter.[17] On January 30, 2004, the Bureau released the *MO&O*, precipitating the need to file this Application for Review.

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[14] Access.1 Supplement, submitting a second engineering exhibit from Michael Rhodes, at 2-3.

[15] Columbia Opposition to Petition for Reconsideration and Opposition to Motion for Stay at 4-5.

[16] Later on January 20, 2004, the Bureau sent a second letter to counsel for the parties rescinding the first letter, because Columbia had already submitted a *Tuck* analysis.

[17] In the *MO&O*, the Bureau ruled that the Second Supplement was an unauthorized pleading and refused to accept it. *MO&O*, n. 2. Access.1 attaches the Second Supplement hereto and requests that the Commission consider the merits of the information contained therein.

V. THE COMMISSION'S *COMMUNITY OF LICENSE* DECISION CREATED A STRONG POLICY AGAINST MOVING STATIONS FROM RURAL COMMUNITIES TO URBANIZED AREAS

Section 307(b) of the Communications Act requires the Commission to provide a fair, efficient and equitable distribution of radio service. In furtherance of its statutory obligation under Section 307(b) of the Act, the Commission, at Section 73.202(b) of its Rules, 47 CFR §73.202(b), has established a Table of Allotments for all FM radio station allotments. A licensee seeking a change in the Table of Allotments to move the allotment of a station to another community must file a petition for rule making to amend Section 73.202(b), and follow the procedures set forth in Section 1.420 of the Commission's Rules, 47 CFR §1.420. The Commission has given licensees extensive guidance with respect to the procedures to be followed and the criteria the Commission will use in reviewing petitions for rule making seeking reallotment of FM channels.

In *Modification of FM and TV Authorizations to Specify a New Community*, 4 FCC Rcd 3870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License*"), the Commission identified three criteria it will use when considering an application for change of community of license: (1) the proposed use must be mutually exclusive with the existing use; (2) the proposed allotment plan must represent a preferred arrangement of allotments for the communities involved, and (3) the original community must not be deprived of local service.[18] The preferred arrangement of allotment priorities identified by the Commission is: (1) first aural service; (2) second aural service, (3) first local service, and (4) other public interest matters. The Commission noted that priorities (2) and (3) are given co-equal weight.[19]

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[18] *Community of License*, 5 FCC Rcd at 7094.

[19] *Id.* at n. 4.

The Commission pointed out, however, that it would not blindly apply the first local service preference of the FM allotment priorities when a station seeks to reallot a channel from a rural community to a suburban community of a nearby urban area.[20] The Commission warned that it would take a close look at any request for change of community of license which proposed a move from a rural community to a suburban community. The Commission stated:

> The application of the allotment priorities and policies, in conjunction with the Commission's minimum distance separation requirements and the present intensive use of spectrum in urban areas, will act as a barrier to the clustering of stations in major metropolitan areas. We will, however, carefully monitor these situations, and will address the issue if necessary [21]

As Access.1 shall demonstrate, it is now necessary for the Commission to address this issue.

In early cases, the Bureau followed the Commission's *Community of License* directive and closely examined cases in which a licensee sought to reallot a station from a rural area to an urban one. In *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 1995 LEXIS 6207 (1995) ("*Headland*"), the Mass Media Bureau explained its policy for cases in which: "a station is seeking to reallot its channel and modify its license from a rural community to another community that is located outside but so close to an Urbanized Area that it actually would place a city-grade (70 dBu) signal over all or a majority of the Urbanized Area."[22] The Bureau stated:

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[20] *Id.* at para. 12-14.

[21] *Id.* citing *Faye & Richard Tuck*, 3 FCC Rcd 5374, 65 RR 2d 402 (1988) ("*Tuck*"); *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) *New South Broadcasting Corp. v. FCC*, 879 F2d 867, 66 RR 2d 1088 (DC Cir 1989); *Huntington Broadcasting Co v. FCC*, 192 F2d 3 (DC Cir 1951).

[22] The Mass Media Bureau pointed out that the U.S. Census Bureau defines an "Urbanized Area" as "consisting of central places and adjacent densely settled areas that together have a minimum of 50,000 persons." *See, Rosehill, Trenton, Aurora, and Ocracoke, North Carolina*, 5 CR 1290, 11 FCC Rcd 21223 (1996).

> We believe that such cases logically raise the same policy concerns that are present when a station seeks to move to a community within an Urbanized Area because it would be placing a city grade signal over most of the Urbanized Area as if it were licensed to the center city. Consequently, to address these policy concerns, we will henceforth require stations seeking to move from rural communities to suburban communities located outside but proximate to Urbanized Areas to make the same showing we currently require of stations seeking to move into Urbanized Areas if they would place a city-grade (70 dBu) signal over 50% or more of the Urbanized Area. We believe that such an approach strikes a reasonable balance between ensuring that rural stations do not migrate to urban areas in a manner inconsistent with the goals of Section 307(b) of the Communications Act and at the same time providing stations with the opportunity to change their communities of license if this would serve the public interest.[23]

The Bureau went on to describe the criteria the Bureau would use in considering such a reallotment request:

> The Commission relies primarily on three criteria to determine if a first local service is warranted. First, "signal population coverage" is examined. This refers to the degree to which the proposed station could provide service not only to the suburban community, but to the adjacent metropolis as well. Second, we examine the size of the suburban community relative to the adjacent city, its proximity to the city, and whether the suburban community is within or outside but proximate to the Urbanized Area, of the central city. Third, we determine the interdependence of the suburban community with the central city, looking at a wide range of evidence concerning work patterns, media services, opinions of suburban residents, community institutions, and community services.[24]

In making its examination of the interdependence of the suburban community and the central city, the Bureau has examined a variety of additional factors, such as whether the communities are part of the same advertising market, whether the smaller community has its own newspaper, telephone book, planning commission, police department, fire department, municipal water works

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[23] *Headland* at par. 11.

[24] *Id.* at par. 12.

and schools. The Bureau has also looked at the extent to which persons living in the smaller community work in the central city.[25]

VI. THE BUREAU FAILED TO CORRECTLY APPLY THE COMMISSION'S *COMMUNITY OF LICENSE* DECISION

In the MO&O, the Bureau failed to implement the clear policy objectives set forth by the Commission in *Community of License.* The clearly articulated objective of the Commission in *Community of License* was to prevent the migration of rural stations to urbanized areas.[26] In this proceeding, the Bureau has permitted the reallotment from a rural community to an urbanized area, in direct contravention of the policy objective stated by the Commission in *Community of License*. In so doing, the Bureau placed "form over substance."

Once the Bureau determined that Columbia proposed to operate from an antenna site from which it would cover 100% of the Shreveport Urbanized Area, the Bureau should have concluded that such a reallotment is contrary to the policy objective set forth in *Community of License*. The *MO&O* engages in a complete legal fiction when it concludes that the reallotment does not constitute the move of a rural allotment to an urbanized area. The reallotment will result in the move of the KVMA-FM signal contour from a contour which covered none of the Shreveport Urbanized Area to a contour which will cover all of the Shreveport Urbanized Area. This is the factual situation at the heart of this proceeding. For the Bureau to adopt the legal myth that this is not a reallotment to an urbanized area, places form over substance and fails to serve the policy

[25] *Id.* at par.14.

[26] *Community of License* at par. 27

objective adopted by the Commission in *Community of License*. The Commission should reject this misapplication of its *Community of License* decision.

VII. THE BUREAU FAILED TO ADDRESS A CLEAR MISREPRESENTATION AND LACK OF CANDOR ENGAGED IN BY COLUMBIA

In the *MO&O*, the Bureau only makes passing reference to a critical misrepresentation and lack of candor demonstrated by Columbia. As noted above, after filing its Petition for Reconsideration and Motion for Stay, Access.1 filed a Supplement which informed the Bureau that, on July 17, 2003, Cumulus filed, with Columbia's consent, what it characterized as a "minor amendment" to a Form 301 construction permit application, which had been filed June 10, 2003, proposing to move the KVMA-FM antenna to a site from which the 60 dBu contour will encompass 100% of the Shreveport Urbanized Area.[27]

Access.1 showed that Columbia kept up the charade of characterizing Access.1's arguments as speculation even after Cumulus filed the Form 301 application amendment. The application proposing to cover the entire Shreveport Urbanized Area was filed on July 17, 2003. Yet, on July 29, 2003, Columbia filed its "Opposition to Petition for Reconsideration and Opposition to Motion for Stay" and repeated its claim that Access.1's arguments were mere "speculation."[28] By so arguing, Columbia clearly gave the Bureau a false impression of the facts. Columbia fully knew that Cumulus had changed the nature of the issue before the Bureau from a mere speculation to an accomplished fact.

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[27] Access.1 Supplement at 2-5.

[28] Columbia Opposition to Petition for Reconsideration and Opposition to Motion for Stay at 4-5.

Access.1 showed that Columbia did not advise the Bureau staff processing Access.1's pending Petition for Reconsideration of this critical change in the facts. Similarly, Cumulus did not advise the Bureau staff processing the construction permit application that this proceeding was pending, or that Columbia had made representations in this proceeding that would be materially affected by the filing of the construction permit amendment. Columbia and Cumulus did not serve Access.1 with a copy of the construction permit application or the amendment, and neither Columbia nor Cumulus otherwise advised the Bureau staff or Access.1 of this material change of the facts.

Access.1 showed that, with the July 17, 2003 filing of the amended Form 301 application, Columbia and Cumulus had revealed that they intended to place the KVMA-FM transmitter at a location where 100% of the Shreveport Urbanized Area would be within the city grade contour of KVMA-FM. At the time Columbia was dismissing Access 1's allegations as "speculations," Columbia knew that Cumulus had already done exactly what Access.1 alleged it would do. Therefore, in calling Access.1's allegations "speculations," Columbia was failing to disclose a material fact to the Bureau with the clear intention that the Bureau be deceived into believing that Access.1's allegations had no substance when, in fact, Access.1 was accurately alleging what Cumulus had already done.

Access.1 showed that, the filing by Cumulus of the Form 301 application, as amended, dispelled any notion that the proposed reallotment of Channel 300C2 from Magnolia, Arkansas to Oil City, Louisiana was anything other than a scheme by Columbia and Cumulus to evade Bureau evaluation of its allotment request under the *Community of License* decision.

Faced with this clear evidence of a calculated scheme to evade scrutiny under the *Community of License* policy, the Bureau completely ignored the facts. In the *MO&O*, the Bureau dismissed in a footnote Columbia's misrepresentation as a merely "frivolous" argument, saying:

> At the time it filed its comments on July 29, 2003, Columbia had already filed its amendment proposing its site 46 kilometers from the community (amendment filed on July 17, 2003). In these circumstances, we reject, as frivolous, Columbia's characterization of the issue of urbanized area coverage as "speculative and untimely."[29]

Dismissing this pattern of misrepresentation and lack of candor is a major error by the Bureau, which must be addressed by the Commission. Arguing that Access.1's position was "speculation" before filing an amendment to cover 100% of the Shreveport Urbanized Area conceivably might be "frivolous." But after filing such an amendment, that argument is no longer "frivolous." After filing an amendment to do exactly what Access.1 alleged, such an argument by Columbia was completely deceptive and manipulative.

Moreover, Access.1 demonstrated that this situation of not advising the Bureau of the change in facts is not the result of a transferor and transferee having no knowledge of each other's activities. The attorney representing Columbia with respect to the instant allotment proceeding is the same attorney who represented Cumulus with respect to the Form 301 construction permit application. Thus, Columbia was fully aware of Cumulus's construction permit application.

Columbia's characterization of Access.1's arguments as mere "speculation" after the filing of Cumulus's construction permit application demonstrates a severe lack of candor and failure to disclose a material fact on the part of Columbia. The Bureau should have designated the Columbia rule making petition for a hearing on a character issue to determine whether Columbia lacked candor in responding to Access.1's Petition for Reconsideration.

In *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 59 RR 2d 801 (1986) (*Character Qualifications)* the Commission announced that its character analysis would focus on "the proclivity of an applicant to deal truthfully with the Commission and

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[29] *MO&O* at n.10.

to comply with [its] rules and policies."[30] The Commission has applied this policy in situations where parties have intentionally failed to fully disclose material facts.[31] This is clearly such an instance and designation for hearing is required.

VIII. THE BUREAU'S FAILURE TO ACHIEVE THE POLICY OBJECTIVES ADOPTED BY THE COMMISSION IN *COMMUNITY OF LICENSE* DEMONSTRATES THAT THE COMMISSION SHOULD CLARIFY THE *COMMUNITY OF LICENSE* DECISION

The failure of the Bureau to properly apply the Commission's *Community of License* decision in this proceeding, strongly suggests that the Commission should clarify the policy set forth in *Community of License.* The Commission made clear in *Community of License,* that it was the Commission's policy to prevent the migration of rural stations to urbanized areas.[32] As the Commission correctly recognized, such a policy is necessary to achieve the statutory scheme of Section 307(b) of the Communications Act, which requires a "fair, efficient and equitable distribution of radio service."[33] In this proceeding, the Bureau completely ignored the facts before it, and erroneously concluded that Columbia's actions did not result in a reallotment of a rural station to an urbanized area.

The Bureau reached this erroneous conclusion, by applying a mechanical test to the petition, rather than to examine its actual effect. Therefore, Access.1 submits that the Commission should revise and clarify its decision in *Community of License* to give guidance to the Bureau in this and similar cases. Access.1 proposes that the Commission:

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[30] *Character Qualifications* at 1190-91.

[31] *See, Knox Broadcasting, Inc.,* 12 FCC Rcd 3337, 6 CR 1411 (1997);*Zephyr Broadcasting, Inc.*, 11 FCC Rcd 19627, 5 CR *550; Pine Tree Media, Inc.*, 8 FCC Rcd 7591, 74 RR 2d 424 (1993); *Atkins Broadcasting*, 8 FCC Rcd 674, 71 RR 2d 1398 (1993).

[32] *Community of License* at par. 27.

[33] *Id.*

1. Direct the Bureau to adopt a presumption against grant of reallotment petitions seeking to move frequencies from rural areas to the vicinity of urbanized areas, if the reallotment will permit coverage of 100% of the urbanized area.

2. Require a petitioner to disclose, in its petition for rule making, the antenna site from which it proposes to operate and the coverage area proposed to be served.

3. Direct the Bureau to deny petitions for reallotment where the petitioner misrepresents or lacks candor regarding the coverage area to be served.

4. If a petitioner proposes a reallotment from which it can cover 100% of an urbanized area, but proposes an antenna site from which it will not cover the urbanized area, the Commission should require an affirmative statement from the petitioner that it will not file to move its antenna to a site from which it will be able to cover the urbanized area.

The case before the Commission demonstrates the need for the above listed clarification and revision of the *Community of License* policy. The Bureau's implementation of the *Community of License* policy has ignored the facts of this case. Therefore, the Commission should direct the Bureau to revise its procedures for implementing the *Community of License* policy to look at all of the actual facts, and not just isolated portions of those facts. Once Columbia filed an application to cover 100% of Shreveport Urbanized Area, the Bureau should have denied the reallotment. Under the clarification proposed here, the Bureau would be directed to deny such a reallotment.

IX. THE BUREAU HAS DISREGARDED THE *COMMUNITY OF LICENSE* POLICY IN AN INCREASING NUMBER OF RECENT CASES

It should be noted that the misapplication of the *Community of License* policy in this proceeding is not an isolated incident. This proceeding appears to be one in a series of proceedings in which the Bureau has allowed the Commission's policy to be abused, such that allotments have been moved to urbanized areas in contravention of the policies announced by the Commission in

Community of License.[34] In these recent cases, the Bureau has repeatedly rejected as "speculative" arguments that a proposed reallotment would allow a rural frequency to be moved to cover an urbanized area.[35]

In those cases, as in the case before the Commission, the Bureau said arguments against such reallotments were "speculative" and premature and could be presented later, if a construction permit application was filed to move the antenna site to cover the urbanized area. Such a deferral effectively negates the rights of commenters in rule making proceedings. Once a frequency has been reallotted, there is nothing in the process for reviewing a modification application that allows an effective challenge to the modification application. The Commission's rules do not permit a petition to deny a minor change modification application. Thus, an opposing party has the opportunity to file only an informal objection. Moreover, the staff processing modification applications, which is different and separate from the staff which reviews allotment petitions, usually address only technical questions, such as interference. In the instant case, the Bureau staff reviewing the KVMA-FM modification application dismissed Access.1's informal objection with a mere statement that the issues raised were addressed in the *MO&O*.[36] In addition, once a reallotment has been granted, the rural community from which the allotment was removed would not receive a return of the reallotted frequency, even if the construction permit application were denied.

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[34] See, *Chillicothe and Asheville, Ohio,* 17 FCC Rcd 20418, recon. denied *Memorandum Opinion and Order,* MM Docket No. 99-322, DA 03-3443, released October 31, 2003, Application for Review filed December 15, 2003 (*"Chillicothe"*); *Warrenton and Enfield, North Carolina,* 13 FCC Rcd 13889 (1998) (*"Warrenton"*); *Oraibi and Leupp, Arizona*, 14 FCC Rcd 13457 (MB 1999) (*"Oraibi"*).

[35] See *Chillicothe*, 17 FCC Rcd at par 6; *Warrenton* at par. 8; *Oraibi* at par. 6.

[36] Letter dated March 10, 2004, from James D. Bradshaw, Associate Chief, Audio Division, Media Bureau to Mark N. Lipp and James L. Winston.

X. THE BUREAU IMPROPERLY APPLIED THE COMMISSION'S *TUCK* ANALYSIS

After Access.1 brought to the Bureau's attention the Form 301 application in which Columbia demonstrated that it intended to cover all of the Shreveport Urbanized Area, the Bureau decided it could not completely ignore this fact. Thus, the Bureau proceeded to conduct a *Tuck* analysis. A *Tuck* analysis is intended to be the Bureau's method for implementing the *Community of License* policy.[37]

In a *Tuck* analysis, the Bureau begins with a consideration of the extent to which the allotment will provide coverage of the entire urbanized area. In this case, that analysis showed that Columbia proposed to cover 100% of the Shreveport Urbanized Area.[38] Second, a *Tuck* analysis examines the relative populations of the allotment community and the urbanized area, and their proximity to each other. The Shreveport Urbanized Area has a population of 274,445 person,[39] and Oil City has a population of 1,219. Oil City is only 22 kilometers (13.7 miles) from the closest point in Shreveport.[40] These factors demonstrate that Columbia planned to cover the entire Shreveport Urbanized Area, that Oil City is dwarfed by the Shreveport Urbanized Area, and that Oil City is in close proximity to Shreveport. Morever, KVMA-FM is being moved from Magnolia, a rural community with a significantly larger population than Oil City. Magnolia is being left with only a daytime AM station. If the objective of the Bureau is to implement the policy of *Community of License*, the Bureau should have denied the petition based solely on these facts.

The Bureau, however, proceeded to consider whether, Oil City is independent of Shreveport. However, in this analysis, the Bureau failed to give proper weight to the evidence presented, which showed that Oil City is dependent on, and not independent from, the Shreveport Urbanized Area.

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[37] *Headland* at par. 11-15.

[38] Access.1 Comments, Exhibit A.

[39] *Id.*

[40] *Id.*

Columbia provided only the scantiest showing to support its claim of independence for Oil City. What Columbia failed to show was that Oil City lacks numerous facilities and services required to exist as an independent community. Access.1 showed that:[41]

1. The Mayor and the City Council positions are part-time positions.
2. Oil City has no newspaper or independent telephone book. Almost everyone in Oil City takes the Shreveport Times (morning paper).
3. The Oil City telephone directory is included in the Shreveport telephone book.
4. There is no hospital in Oil City.
5. There are no doctors' offices or dentists' offices.
6. There are no medical clinics.
7. There is no Oil City fire department. The fire service is handled by the Caddo Parish Fire District.
8. There is no Oil City trash service. There is a Caddo Parish dump site for trash located in Oil City. This is not a service of the Oil City government. Residents must take their trash or garbage to the Caddo Parish dump site.
9. The water for Oil City is provided by the Caddo Parish water district. The Oil City government has nothing to do with it.
10. There is no local mass transit in Oil City and there are no taxicabs.
11. There is no grocery store. The Save Mart is boarded up, and Oil City Foods has a disconnected telephone number.
12. Oil City has no high school or schools beyond high school.

Morever, even the information supplied by Columbia showed that Oil City is not independent of the Shreveport Urbanized Area. Columbia reported that of the 388 residents of Oil City who are employed, only 84, representing 22%, are employed in Oil City. This leaves 78% of the residents – a vast majority – employed outside of Oil City. Columbia did not assert that the Oil City government collected taxes.

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[41] Access.1 Second Supplement at 4-5, citing the attached Declaration of Cary Camp, General Manager of the Access.1 stations serving the Shreveport Urbanized Area.

Access.1 pointed out that, in *Greenfield and Del Rey Oaks*, 4 CR 1276, 11 FCC Rcd 12681 (1996 MMB) the Bureau was presented with a similar situation. There, the elected mayor, city council members and police officials were all part-time positions. The community collected no taxes. The majority of residents worked in larger surrounding communities. The community provided no transportation services to its residents. The allegedly independent community had no newspaper, telephone book, hospital, fire protection, schools, libraries, trash collection and water service. Faced with these and other indicia of lack of independence, the Bureau held that the community was not independent of the urbanized area, and denied the reallotment.[42] However, in spite of this precedent, and the facts before it in this case, the Bureau granted Columbia the reallotment of KVMA-FM to Oil City.[43]

XI. THE COMMISSION'S *TUCK* ANALYSIS CONTRADICTS THE COMMISSION'S NEWLY ADOPTED ARBITRON RADIO MARKET DEFINITION, IS NOT SUPPORTED BY ANY MEASURABLE METHOD OF DETERMINING "LOCAL SERVICE" AND IS ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION

Access.1 demonstrated above that the Bureau misapplied the Commission's *Tuck* analysis. In addition, it appears that the *Tuck* analysis no longer has a legal basis for its application. In the Commission's decision revising its broadcast ownership rules, the Commission adopted Arbitron markets as the basis for defining radio markets.[44] In adopting Arbitron markets, to replace the

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[42] *Greenfield and Del Rey Oaks*, 4 CR 1276 at par. 9.

[43] *MO&O* at par. 7.

[44] *Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* 18 FCC Rcd 13620. par. 239-281. (2003) (*"Ownership R&O"*). The effective date of the *Ownership R&O* has been stayed by the Third Circuit Court of Appeals, pending review, *Prometheus Radio Project v. FCC*, No. 03-3388 (3rd Cir. Sep. 3, 2003) (per curiam) (order granting motion for stay of effective date of the FCC's new ownership rules). However, the reasoning of the Commission's decision can and should be applied in this case. *See Shareholders of Hispanic Broadcasting Corporation*, 30 CR 503 (2003), at par. 11.

former contour defined markets, the Commission noted that using such a market definition recognized that stations within a market are deemed "likely to serve the larger out-lying metropolitan areas that also comprise Arbitron Metros."[45] This determination undermines any legal basis for treating the Oil City allotment as anything other than a Shreveport Arbitron station.

Oil City is within the Shreveport Arbitron Metro Market. Oil City is located in Caddo Parish, and all of Caddo Parish is within the Shreveport Arbitron Metro market. Once KVMA-FM commences operating at the new site covering the entire Shreveport Urbanized Area, Arbitron will certainly add KVMA-FM to the Shreveport market. Thus, the Bureau's conclusion under the *Tuck* analysis is in direct conflict with the reasoning of the Commission in adopting the new Arbitron radio market definition. The Bureau's *Tuck* conclusion is therefore unsupported, and is arbitrary, capricious and an abuse of discretion. The Bureau's *Tuck* conclusion must be reversed.

The Bureau's *Tuck* decision is also unsupported by the expectation that it will result in the provision of "local service" to Oil City. Nothing in the *Tuck* analysis demonstrates that Oil City will receive "local service." The Bureau cites nothing which would give it the ability to monitor the nature and extent of any "local service" that Columbia might provide, or that would enable the Bureau to determine if that requirement is being satisfied. The Commission has, through deregulation, eliminated any procedures by which the Commission might measure such "local service." Similarly, the Commission has moved away from any regulatory standard for service to a "community of license." Over the course of the last twenty years, the Commission has eliminated: (1) the formal ascertainment obligation;[46] (2) the requirement to maintain program logs of local

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[45] *Ownership R&O* at par. 280.

[46] *Deregulation of Radio*, 84 FCC 2d 968, 993-999 (1981) *recon granted in part*, 87 FCC 2d 796 (1981), *aff'd. in relevant part, United Church of Christ v. FCC*, 707 F 2d at 1435 ("*Deregulation of Radio*").

programming;[47] (3) the requirement to maintain a main studio in the community of license;[48] and (4) the requirement to provide a specified amount of local programming.[49] The Congress and the Commission have eliminated the comparative renewal process.[50] While the petition to deny a license renewal is still in existence, undersigned counsel is unaware of any instance in more than 20 years in which the Commission has denied or designated for hearing a license renewal application based on a petition to deny alleging insufficient "local service" or failure to serve the "community of license."

Thus, the Commission finds itself in a position precisely analogous to its situation in the *Bechtel* case.[51] In *Bechtel*, the Commission had for years implemented a comparative licensing system which depended in large part on the supposedly predictive value of the "integration" analysis. The conceptual validity of that analysis at the time of its initial implementation, in the 1940s, and even in the 1960s, may have been reasonable. But, by the late 1980s, regulatory changes adopted by the Commission over a period of years had undermined any seeming validity of the integration analysis, and the Commission was unable to provide any showing that the analysis in fact produced or was likely to produce any of the salutary effects which it was intended to produce. As a result, the Court of Appeals held that the integration policy was arbitrary and capricious and ordered the Commission to cease utilizing the policy.[52]

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[47] *Deregulation of Radio* at 84 FCC 2d at 1008-1010.

[48] *Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 2 FCC Rcd 3215 (1987).

[49] *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984).

[50] *See, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, 11 FCC Rcd 6363 (199).

[51] *Bechtel v. FCC*, 10 F 3d 875 (D. C. Cir. 1993).

[52] *Id.*

In this case, the Bureau has allotted a new station to the Shreveport Arbitron market with no basis for concluding that it will provide "local service" to Oil City The Bureau has no way to measure whether such local service will ever be provided and no means for collecting data to determine if such local service will be provided. In fact, in none of the cases in which the Commission has utilized the *Tuck* analysis has the Commission had in place procedures by which it can determine or measure whether "local service" has been delivered to the new "community of license." The Commission cannot affirm the Bureau's determination based upon its expectation that "local service" will be provided, where there is no legal or factual support for it. To do so would be arbitrary, capricious and an abuse of discretion.

XII. THE REALLOTMENT WILL NOT SERVE THE PUBLIC INTEREST

As a final matter, Access.1 demonstrated that, in addition to all of the other flaws with this reallotment, this reallotment will not serve the public interest, because it will result in a loss of service. Access.1 demonstrated that the only station remaining in Magnolia, Arkansas, KVMA(AM), is licensed to operate with only 0.03 kW (30 Watts) at night. The nighttime interference free contour for KVMA(AM) is 21.9 mV/m and this contour extends only 2.21 km (1.37 miles) from the transmitter site. This provides nighttime local aural service to only 32% of the population of the City of Magnolia, and only 35% of the area of the city.[53] Access.1 pointed out that Section 73.24(I) of the Commission's Rules, 47 CFR Section 73.24 (I), requires a station to provide nighttime interference free service to 80% of its community. Access.1 showed that, while Class D stations are exempt from this nighttime service requirement, the rule establishes the minimum level of community coverage considered adequate by the Commission. Thus, although

[53] Access.1 Comments, Exhibit A at 1.

in theory Magnolia would have a remaining AM station, the removal of KVMA-FM would leave Magnolia, Arkansas without a full-time aural broadcast service.[54]

In addition, Access.1 showed that the proposed reallotment would create several areas which would receive less than 5 aural broadcast services. Access.1 showed that, from the location specified in the proposed Rule Making, there would be 162.1 sq. km. of area, with a population of 2,030 persons, that would be left with only 4 aural services.[55] Access.1 also showed that, if the calculations are made based upon full Class C1 facilities at KVMA-FM's current location, the potential loss is 12,130 sq. km and the corresponding gain is only 4,340 sq. km. The area with only 4 remaining services increases to 413 sq. km. populated by 14,594 persons. Thus, Access.1 demonstrated that removing the Channel C1 allotment from Magnolia, Arkansas would deprive 14,594 people, most of whom are located in and around Hope, Arkansas, from having 5 aural broadcast services, and thus would prevent them from being "well-served."

XIII. CONCLUSION

Access.1 has demonstrated that the Bureau committed at least six errors which require Commission review. First, the Bureau allowed the reallotment of a rural FM allotment to a community from which 100% of the Shreveport Urbanized Area could be served. Second, the Bureau dismissed as mere "speculation" the likelihood that Columbia would move its antenna site to a location from which it would serve 100% of the Shreveport Urbanized Area. Third, after Access.1 demonstrated that Columbia had completely misrepresented its actions and had openly demonstrated a lack of candor by failing to disclose that it had filed to move its antenna site to cover 100% of the Shreveport Urbanized Area, the Bureau neither investigated nor imposed a sanction upon this misconduct. Fourth, the Bureau misapplied the policy underlying the Commission's *Community of License* decision. Fifth, the Bureau applied a *Tuck* analysis which is now in conflict

[54] Access.1 Comments, Exhibit A at 1.

[55] Id. at 2.

with the Commission's newly adopted rule defining radio markets based upon Arbitron markets. Sixth, the *Tuck* analysis is not supported by any measurable method for determining whether a licensee provides "local service," or serves its "community of license," and it is therefore arbitrary, capricious and an abuse of discretion, and needs to be revised or eliminated, in accordance with the reasoning of the Court of Appeals in *Bechtel.*

Therefore, Access.1 requests that the Commission: (1) review and reverse the Bureau's decision that reallotted Channel 300C1 from Magnolia, Arkansas to Oil City, Louisiana, (2) direct the Bureau to change its procedures for evaluating reallotment petitions, where the reallotment of a rural allotment will permit service to 100% of an Urbanized Area, (3) require a petitioner seeking reallotment of a rural frequency to disclose in its petition the service area planned to be served, (4) direct the Bureau to deny a petition for reallotment where the petitioner misrepresents the petitioner's true intentions, and (5) clarify the Commission's *Community of License* policy to deny the reallotment of rural frequencies to communities from which 100% of an Urbanized Area can be served, absent an affirmative representation by the petitioner that it is not intending to move its antenna site to a location from which it can serve 100% of the Urbanized Area. [56]

Respectfully Submitted,

ACCESS.1 COMMUNICATIONS-SHREVEPORT, LLC

By its Attorneys

James L. Winston
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March 25, 2004

[56] A summary of the MO&O was published in the Federal Register on February 24, 2004. 69 Fed Reg. 8333 (February 24, 2004). Accordingly, this Application for Review is timely. See Sections 1.115(d) and 1.4(b) of the Commission's Rules.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	
FM Broadcast Stations	)	
	)	MB Docket No. 02-199
	)	RM-10514
(Magnolia, Arkansas and Oil City,	)	
Louisiana)	)	

To: Chief, Media Bureau

SECOND SUPPLEMENT TO PETITION FOR RECONSIDERATION
OF
ACCESS.1 LOUISIANA HOLDING COMPANY LLC

Access.1 Louisiana Holding Company, LLC ("Access.1"),[1] licensee of commercial broadcast radio stations operating in the Shreveport Urbanized Area, pursuant to Section 1.45(b) of the Commission's Rules, 47 CFR Section 1.45(b), hereby submits its Second Supplement to its Petition for Reconsideration regarding the Response filed by Columbia Broadcasting Commission., Inc. ("Columbia"), in this proceeding on January 21, 2004. Access.1 submits that Columbia has failed to demonstrate that Oil City is an independent community within the Commission's policies set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

I. BACKGROUND

On January 20, 2004, the Chief, Audio Division, Media Bureau sent a letter to counsel for the parties in this proceeding. In the letter the Bureau pointed out that:

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[1] Access.1 is the assignee of Access.1 Communications-Shreveport, LLC, former licensee and parent company of Access.1.

> A staff analysis has determined that the Columbia application filed on June 10, 2003 (File No. BPH-20030610ADI) proposes a transmitter site from which Station KVMA-FM would place a 70 dBu signal over all of the Shreveport Urbanized *Area*. If such a site had been specified in the allotment proceeding, we would have required a showing pursuant to *Faye and Richard Tuck*, and *Huntington Broadcasting Co. v* FCC to demonstrate that Oil City is independent of the Urbanized Area and therefore entitled to consideration as a fist local aural transmission service.[2]

The Bureau added:

> Approval of the City of License change from Magnolia to Oil City was predicated on Oil City receiving its first local aural transmission service. The filing of the construction permit application puts in issue that non-final determination. Accordingly, pursuant to *Faye and Richard Tuck* and *Huntington Broadcasting Co. v. FCC*, we hereby require Columbia to submit a showing to demonstrate that Oil City is independent of the Shreveport Urbanized Area.[3]

Access.1 submits this Second Supplement to demonstrate that Oil City is not independent of the Shreveport Urbanized Area.

II. OIL CITY IS NOT INDEPENDENT OF THE SHREVEPORT URBANIZED AREA

Throughout this proceeding, Access.1 has demonstrated to the Bureau that Columbia and Cumulus Licensing Company ("Cumulus") (collectively the "Joint Applicants") have manipulated the Commission's processes. The Joint Applicants have intentionally mislead the Commission about their intention to serve the Shreveport Urbanized Area. Access.1 will not repeat those arguments here, but incorporates by reference its pleadings and arguments previously submitted to

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[2] January 20, 2004, Letter at 2.

[3] On January 20, 2004 the Bureau rescinded the letter due to Columbia's previous submission of a purported demonstration of the independence of Oil City.

of the Shreveport Urbanized Area. Columbia reports that of the 388 residents of Oil City who are employed, only 84, representing 22%, are employed in Oil City. This leaves 78% of the residents – a vast majority – employed outside of Oil City. Columbia does not assert that the Oil City government collects taxes.

In *Greenfield and Del Rey Oaks*, 4 CR 1276, 11 FCC Rcd 12681 (1996 MMB) the Bureau was presented with a similar situation. There, the elected mayor, city council members and police officials were all part-time positions. The community collected no taxes. The majority of residents worked in larger surrounding communities. The community provided no transportation services to its residents. The allegedly independent community had no newspaper, telephone book, hospital, fire protection, schools, libraries, trash collection and water service. Faced with these and other indicia of lack of independence, the Bureau held that the community was not independent of the urbanized area, and denied the reallotment.[8] A similar result is required here.

WHEREFORE, for the foregoing reasons, and the reasons more fully set forth in its Petition for Reconsideration and other pleadings submitted in this proceeding, Access.1 requests that the Bureau grant Access.1's Petition for Reconsideration and deny the relief requested by the Joint Applicants.

Respectfully Submitted,

ACCESS.1 LOUISIANA HOLDING COMPANY LLC

By its Attorneys,

/s/James L. Winston
James L. Winston
Steven J. Stone
RUBIN, WINSTON, DIERCKS,

[8] *Greenfield and Del Rey Oaks*, 4 CR 1276 at par. 9.

the Commission.[4] Access.1 submits that the issues previously raised in this proceeding require designation of this matter for an evidentiary hearing.

Because of the misrepresentation and lack of candor demonstrated by the Joint Applicants regarding their move-in allotment to the Shreveport Urbanized Area, the Bureau should not now consider conducting a *Tuck* analysis of the allotment. However, should the Bureau conduct such an analysis, the analysis will further demonstrate that the allotment should be rescinded.

In a *Tuck* analysis, the Commission begins with a consideration of the extent to which the allotment will provide coverage of the entire urbanized area. In this case, that analysis shows that the Joint Applicants propose to cover 100% of the Shreveport Urbanized Area.[5] Second, a *Tuck* analysis examines the relative populations of the allotment community and the Urbanized Area, and their proximity to each other. The Shreveport Urbanized Area has a population of 274,445 person,[6] and Oil City has a population of 1,219. Oil City is only 22 kilometers from the closest point in Shreveport.[7] These first two factors clearly demonstrate that the Oil City is dwarfed by the Shreveport Urbanized Area and is in close proximity to it.

Morever, with respect to the question raised by the Bureau in its January 20, 2004 letter, it is clear that Oil City is not independent of the Shreveport Urbanized Area. Columbia has provided only the scantiest showing to support its claim of independence for Oil City. What Columbia fails

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[4] Access.1 *Comments* filed September 23, 2002; Access.1 Petition for Reconsideration filed June 13, 2003; Access.1 Motion for Stay filed June 12, 2003; Access.1 Supplement to Petition for Reconsideration filed September 23, 2003; Access.1 Opposition to Request for Expedited Action, filed January 20, 2004.

[5] Access.1 Comments, Exhibit A.

[6] *Id.*

[7] *Id.*

to show, however, is that Oil City lacks numerous facilities and services required to exist as an independent community. Attached hereto as Exhibit 1 is the Declaration of Cary Camp, General Manager of the Access.1 stations serving the Shreveport Urbanized Area. Mr. Camp's Declaration shows that:

1. The Mayor and the City Council positions are part-time positions.

2. The city of Oil City has no newspaper or independent telephone book. Almost everyone in Oil City takes the Shreveport Times (morning paper).

3. The Oil City telephone directory is included in the Shreveport telephone book.

4. There is no hospital in Oil City.

5. There are no doctors' offices or dentists' offices.

6. There are no medical clinics.

7. There is no Oil City fire department. The fire service is handled by the Caddo Parish Fire District.

8. There is no Oil City trash service. There is a Caddo Parish dumpsite for trash located in Oil City. This is not a service of the Oil City government. Residents must take their trash or garbage to the Caddo Parish dumpsite.

9. The water for Oil City is provided by the Caddo Parish water district. The Oil City government has nothing to do with it.

10. There is no local mass transit in Oil City and there are no taxicabs.

11. There is no grocery store. The Save Mart is boarded up and Oil City Foods has a disconnected telephone number.

12. Oil City has no high school or schools beyond high school.

Morever, even the information supplied by Columbia shows that Oil City is not independent

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January 28, 2004

DECLARATION
OF
CARY CAMP

I, Cary Camp, am General Manager of the Access.1 Louisiana Holding Company, LLC radio stations serving the Shreveport Urbanized Area.

I visited Oil City, Louisiana on January 22, 2004. On my visit, I investigated the community and took photographs of the community.

I obtained the following information concerning Oil City:

1. The Mayor and the City Council positions are part-time positions.

2. Oil City has no newspaper or independent telephone book. I am advised that almost everyone in Oil City takes the Shreveport Times (morning paper).

3. The Oil City telephone directory is included in the Shreveport telephone book.

4. There is no hospital in Oil City.

5. There are no doctors' offices or dentists' offices.

6. There are no medical clinics.

7. There is no Oil City fire department. The fire service is handled by the Caddo Parish Fire District.

8. There is no Oil City trash service. There is a Caddo Parish dumpsite for trash located in the town of Oil City. This is not a service of the city. You must take your trash or garbage to the Caddo Parish dumpsite.

9. The water for Oil City is provided by the Caddo Parish water district. The city has nothing to do with it.

10. There is no local mass transit in Oil City and there are no taxicabs.

11. The Save Mart is boarded up and Oil City Foods has a disconnected telephone number.

12 Oil City has no high school or schools beyond high school.

In my opinion, Oil City is not independent of the Shreveport Urbanized Area.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge information and belief.

January 28, 2004
Date

/s/ Cary Camp
Cary Camp

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that the foregoing "Second Supplement to Petition for Reconsideration of Access.1 Louisiana Holding Company LLC" was mailed this 28th day of January, 2004 to the following:

Peter Doyle, Chief*
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Media Bureau
Federal Communications Commission
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John A. Karousos, Assistant Chief*
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Mark N. Lipp
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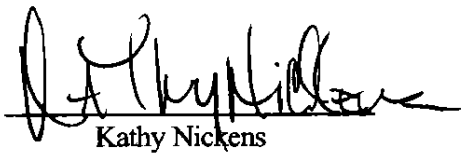
* Delivered via facsimile



Kathy Nickens

January 28, 2004

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P., do hereby certify that the foregoing "Application for Review" was mailed this 25th day of March, 2004 to the following:

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Federal Communications Commission
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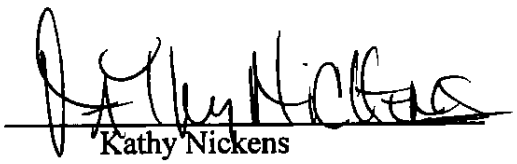

Kathy Nickens

March 25, 2004